

## APPENDIX D

### CONTINUING DISCLOSURE AGREEMENT

This Continuing Disclosure Agreement (the "Disclosure Agreement") is executed and delivered by the Public Facilities Financing Authority of the City of San Diego (the "Authority") for and on behalf of itself and the City of San Diego (the "City") for and on behalf of the City's Reassessment District No. 1999-1 and U.S. Bank Trust National Association, as dissemination agent (the "Dissemination Agent") in connection with the issuance of Refunding Revenue Bonds (Reassessment District No. 1999-1) Series 1999-A Senior Lien Bonds and Series 1999-B Subordinate Lien Bonds. The Bonds are being issued pursuant to a Indenture of Trust, dated as of January 1, 1999 (the "Indenture"). The Authority and the Dissemination Agent covenant and agree as follows:

**SECTION 1. Purpose of the Disclosure Agreement.** This Disclosure Agreement is being executed and delivered by the Authority and the Dissemination Agent for the benefit of the Owners and Beneficial Owners of the Bonds and in order to assist the Participating Underwriters in complying with S.E.C. Rule 15c2-12(b)(5).

**SECTION 2. Definitions.** In addition to the definitions set forth in the Indenture, which apply to any capitalized term used in this Disclosure Agreement unless otherwise defined in this Section, the following capitalized terms shall have the following meanings:

"Annual Report" shall mean the Authority's annual continuing disclosure report provided by the Authority pursuant to, and as described in, Sections 3 and 4 of this Disclosure Agreement.

"City Annual Report" shall mean the audited Comprehensive Annual Financial Report of the City.

"Disclosure Representative" shall mean the Deputy City Manager of the City or his or her designee, or such other officer or employee as the Authority shall designate in writing to the Dissemination Agent from time to time.

"Dissemination Agent" shall mean Deputy City Manager of the City, acting in his or her capacity or Dissemination Agent hereunder, or any successor Dissemination Agent designated in writing by the Authority and which has filed with the Trustee a written acceptance of such designation.

"Listed Events" shall mean any of the events listed in Section 5(a) of this Disclosure Agreement.

"National Repository" shall mean any Nationally Recognized Municipal Securities Information Repository for purpose of the Rule. Currently, the following are National Repositories:

Bloomberg Municipal Repository  
P.O. Box 840  
Princeton, NJ 08542-0840  
(609) 279-3200  
FAX (609) 279-5962  
E-mail: MUNIS@Bloomberg.com

DPC Data Inc.  
One Executive Drive  
Fort LICENSEE, NJ 07024  
(201) 346-0701  
FAX (201) 947-0107  
E-mail: nrmsir@dpcdata.com

Kenny Information Systems, Inc.  
Attn: Kenny Repository Service  
65 Broadway, 16th Floor  
New York, NY 10006  
(212) 770-4595  
FAX (212) 797-7994

Thomson NRMSIR  
Attn: Municipal Disclosure  
395 Hudson Street, 3rd Floor  
New York, NY 10014  
(212) 807-5001 or (800) 689-8466  
FAX (212) 989-2078  
E-mail: Disclosure@Muller.com

"Participating Underwriter" shall mean any of the original underwriters of the Bonds required to comply with the Rule in connection with offering of the Bonds.

"Repository" shall mean each National Repository and the State Repository.

"Rule" shall mean Rule 15c2-12(b)(5) adopted by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as the same may be amended from time to time.

"State Repository" shall mean any public or private repository or entity designated by the State of California as a state repository for the purpose of the Rule and recognized as such by the Securities and Exchange Commission. As of the date of this Agreement, there is no State Repository.

"Trustee" shall mean U.S. Bank Trust National Association, in Los Angeles, California, or any successor thereto.

**SECTION 3. Provision of Annual Reports.**

- (a) The Authority shall, or, upon written direction, shall cause the Dissemination Agent to, not later than April 1st after the end of the Authority's fiscal year (which fiscal year presently ends June 30), commencing with the report for the 1999-2000 fiscal year, provide to each Repository an Annual Report which is consistent with the requirements of Section 4 of this Disclosure Agreement. The Annual Report may be submitted as a single document or as separate documents comprising a package, and may include by reference other information as provided in Section 4 of this Disclosure Agreement; provided that the audited financial statements of the Authority may be submitted separately from and later than the balance of the Annual Report if they are not available by the date required above for the filing of the Annual Report. The Dissemination Agent shall have no duty to review or approve the content of the Annual Report, or any part thereof. If Authority's fiscal year changes, it shall give notice of such change in the same manner as for a Listed Event under Section 5.
- (b) Not later than fifteen (15) Business Days prior to the latest date specified in subsection (a) for providing the Annual Report to Repositories, the Authority shall provide the Annual Report to the Dissemination Agent. If by the latest date specified in subsection (a), the Dissemination Agent has not received a copy of the Annual Report, the Dissemination Agent shall notify the Authority.
- (c) If the Dissemination Agent is unable to verify that an Annual Report has been provided to Repositories by the date required in subsection (a), the Dissemination Agent shall send a notice to each Repository and the Municipal Securities Rulemaking Board in substantially the form attached as Exhibit A.
- (d) The Dissemination Agent shall:
  - (i) determine each year prior to the date for providing the Annual Report the name and address of each National Repository and the State Repository, if any; and
  - (ii) to the extent it can confirm such filing of the Annual Report, file a report with the Trustee and the Authority certifying that the Annual Report has been provided pursuant to this Disclosure Agreement, stating the date it was provided and listing all the Repositories to which it was provided.

**SECTION 4. Content of Annual Reports.** The Authority's Annual Report shall contain or include by reference the following:

- (a) The City Annual Report, for the most recently ended fiscal year, prepared in accordance with generally accepted accounting principles applicable from time to time to the City. If the City's Annual Report is not available by the time the Annual Report is required to be filed pursuant to Section 3(a), the City Annual Report shall contain unaudited financial statements, and the audited financial statements shall be filed in the same manner as the Annual Report when they become available.
- (b) Other financial information and operating data relating to Reassessment District No. 1999-1 contained in the Official Statement for the Bonds as follows:
  - (1) Principal amount of Bonds outstanding.
  - (2) Balance in the Revenue Fund.
  - (3) Balance in the Reserve Fund and a statement of the Reserve Requirement.
  - (4) An update of the following tables in the Official Statement.
    - Table 2 Development Status and Land Use Summary.
    - Table 4 Assessed Value-to-Lien Ratio Ranges
    - Table 6 Appraised Value-to-Lien Ratios by Property Owner (excluding there from the columns headed "Appraised Value" and "Appraised Value-to-Lien Ratio"
    - Table 8 Delinquency History
- (c) Any or all of the items listed above may be included by specific reference to other documents, including official statements of debt issues of the Authority or related public entities, which have been submitted to each of the Repositories or the Securities and Exchange Commission. If the document included by reference is a final official statement, it must be available from the Municipal Securities Rulemaking Board. The Authority shall clearly identify each such other document so included by reference.

## SECTION 5. Reporting of Significant Events

(a) Pursuant to the provisions of this Section 5, the Authority shall give, or cause to be given, notice of the occurrence of any of the following events with respect to the Bonds, if the Authority determines that such event is material:

- (1) principal and interest payment delinquencies;
- (2) non-payment related defaults;
- (3) unscheduled draws on debt service reserves reflecting financial difficulties;
- (4) unscheduled draws on credit enhancements reflecting financial difficulties;
- (5) substitution of credit or liquidity providers, or their failure to perform;
- (6) adverse tax opinions or events adversely affecting the tax-exempt status of the Bonds;
- (7) modifications to rights of Owners of Bonds;
- (8) bond calls;
- (9) defeasances;
- (10) release, substitution or sale of property securing repayment of the Bonds; and
- (11) rating changes.

(b) Whenever the Authority obtains knowledge of the occurrence of a Listed Event, the Authority shall as soon as possible determine if such event would be material under applicable federal securities laws. The Dissemination Agent shall have no responsibility for such determination and shall be entitled to conclusively rely on the Authority's determination.

(c) If the Authority has determined that the occurrence of a Listed Event would be material under applicable federal securities laws, the Authority shall promptly notify the Dissemination Agent in writing. Such notice shall instruct the Dissemination Agent to report the occurrence pursuant to subsection (e).

(d) If, under subsection (b), the Authority determines that the Listed Event would not be material under applicable federal securities laws, the Authority shall so notify the Dissemination Agent in writing and instruct the Dissemination Agent not to report the occurrence pursuant to subsection (e).

(e) If the Dissemination Agent has been instructed by the Authority to report the occurrence of a Listed Event and has received a notice of the occurrence in a format suitable for filing with each Repository, the Dissemination Agent shall file a notice of such occurrence with the Repositories, the State Repository and the Municipal Securities Rulemaking Board. Notwithstanding the foregoing, notice of Listed Events described in subsections (a)(8) and (9) need not be given under this subsection any earlier than the notice (if any) of the underlying event is given to Owners of affected Bonds pursuant to the Indenture. Notice of a Listed Event is only required under this Section 5 following the occurrence of the Listed Event.

(f) The Dissemination Agent may conclusively rely on an opinion of counsel that the Authority's instructions to the Dissemination Agent under this Section 5 comply with the requirements of the Rule.

SECTION 6. Termination of Reporting Obligation. The Authority's and the Dissemination Agent's obligations under this Disclosure Agreement shall terminate upon the legal defeasance, prior redemption or payment in full of all of the Bonds.

SECTION 7. Dissemination Agent. The Authority may, from time to time, appoint or engage a Dissemination Agent to assist it in carrying out its obligations under the Disclosure Agreement, and may discharge any such Dissemination Agent, with or without appointing a successor Dissemination Agent. The Dissemination Agent shall not be responsible in any manner for the content of any notice or report prepared by the Authority pursuant to this Disclosure Agreement. The Dissemination Agent may resign by providing thirty days written notice to the Authority. If at any time there is no designated Dissemination Agent appointed by the Authority, or if the Dissemination Agent so appointed is unwilling or unable to perform the duties of Dissemination Agent hereunder, the Authority shall be the Dissemination Agent and undertake or assume its obligations hereunder.

Any person succeeding to all or substantially all of the Dissemination Agent's corporate trust business shall be the successor to the Dissemination Agent hereunder without the execution or filing of any paper or any further act. The Dissemination Agent may resign its duties hereunder at any time upon notice to the Authority.

SECTION 8. Amendment; Waiver. Notwithstanding any other provision of this Disclosure Agreement, the Authority and the Dissemination Agent may amend this Disclosure Agreement, and any provision of this Disclosure Agreement may be waived, provided that the following conditions are satisfied:

- (a) If the amendment or waiver relates to the provisions of Sections 3(a), 4 or 5, it may only be made in connection with a change in circumstances that arises from a change in legal requirements, change in law, or change in the identity, nature or status of an obligated person with respect to the Bonds, or the type of business conducted.
- (b) The undertaking, as amended or waived, would, in the opinion of nationally recognized bond counsel, have complied with the requirements of the Rule at the time of the original issuance of the Bonds, after taking into account any amendments or interpretations of the Rule, as well as any change in circumstances; and
- (c) The proposed amendment or waiver either (i) is approved by the Owners of the Bonds in the same manner as provided in the Indenture for amendments to the Indenture with the consent of Owners, or (ii) does not, in the opinion of nationally recognized bond counsel, materially impair the interests of the Owners or Beneficial Owners of the Bonds.
- (d) In the event of any amendment or waiver of a provision of this Disclosure Agreement, the Authority shall describe such amendment in the next Annual Report, and shall include, as applicable, a narrative explanation of the reason for the amendment or waiver and its impact on the type (or in the case of a change of accounting principles, on the presentation) of financial information or operating data being presented by the Authority. In addition, if the amendment relates to the accounting principles to be followed in preparing financial statements, (i) notice of such change shall be given in the same manner as for a Listed Event under Section 5(f), and (ii) the Annual Report for the year in which the change is made should present a comparison (in narrative form and also, if feasible, in quantitative form) between the financial statements as prepared on the basis of the new accounting principles and those prepared on the basis of the former accounting principles. The Dissemination Agent shall not be obligated to enter into any such amendment that modifies or increases its respective duties or obligations hereunder. The Dissemination Agent may rely on an opinion of counsel that the amendment or waiver complies with the requirements of the Rule.

SECTION 9. Additional Information. Nothing in this Disclosure Agreement shall be deemed to prevent the Authority from disseminating any other information, using the means of dissemination set forth in this Disclosure Agreement or any other means of communication, or including any other information in any Annual Report or notice of occurrence of a Listed Event, in addition to that which is required by this Disclosure Agreement. If the Authority chooses to include any information in any Annual Report or notice of occurrence of a Listed Event in addition to that which is specifically required by this Disclosure Agreement, the Authority shall have no obligation under this Agreement to update such information or include it in any future Annual Report or notice if — occurrence of a Listed Event.

SECTION 10. Default. In the event of a failure of the Authority or the Dissemination Agent to comply with any provision of this Disclosure Agreement, the Trustee at the written request of any Participating Underwriter or the Owners of at least 25% aggregate principal amount of Outstanding Bonds, shall, but only to the extent it has been indemnified to its satisfaction from any cost, liability or expense whatsoever, including, without limitation, fees and expenses of its attorneys, or any Owner or Beneficial Owner of the Bonds may take such actions as may be necessary and appropriate, including seeking mandate or specific performance by court order, to cause the Authority or Dissemination Agent, as the case may be, to comply with its obligations under this Disclosure Agreement. A default under this Disclosure Agreement shall not be deemed an Event of Default under the Indenture and the sole remedy under this Disclosure Agreement in the event of any failure of the Authority or the Dissemination Agent to comply with this Disclosure Agreement shall be an action to compel performance.

SECTION 11. Duties, Immunities and Liabilities of Trustee and Dissemination Agent. All of the immunities, indemnities, and exceptions from liability in Article XI of the Indenture insofar as they relate to the Trustee shall apply to the Dissemination Agent in this Disclosure Agreement. The Dissemination Agent shall have only such duties as are specifically set forth in this Disclosure Agreement, and the Authority agrees to indemnify and save the Dissemination Agent, and Trustee, their officers, directors, employees and agents, harmless against any loss, expense and liabilities which it may incur arising out of or in the exercise or performance of its powers and duties hereunder, including the costs and expenses (including attorneys fees) of defending against any claim of liability, but excluding liabilities due to the Dissemination Agent's or Trustee's negligence or willful misconduct. The Dissemination Agent may rely on and shall be protected in acting or refraining from acting upon any direction from the Authority or an opinion of nationally recognized bond counsel. The Dissemination Agent shall be paid compensation by the Authority for its services provided hereunder in accordance with its schedule of fees as agreed to between the Dissemination Agent and the Authority from time-to-time and all expenses, legal fees and advances made or incurred by the Dissemination Agent in the performance of its duties of hereunder. The Dissemination Agent and Trustee shall have no duty or obligation to review any information provided to them by the Authority hereunder and shall not be deemed to be acting in any fiduciary capacity for the Authority, the Owners, or Beneficial Owners or any other party. The obligations of the Authority under this Section shall survive resignation or removal of the Dissemination Agent and payment of the Bonds. No person shall have any right to commence any action against the Dissemination Agent seeking any remedy other than to compel specific performance of this Agreement. The Dissemination Agent shall not be liable under any circumstances for monetary damages to any person for any breach of this Agreement.

SECTION 12. Beneficiaries. This Disclosure Agreement shall inure solely to the benefit of the Authority, the Trustee, the Dissemination Agent, the Participating Underwriters and Owners and Beneficial Owners from time to time of the Bonds, and shall create no rights in any other person or entity.

SECTION 13. Notices. Notices should be sent in writing to the following addresses. The following information may be conclusively relied upon until changed in writing.

Disclosure Representative: Deputy City Manager  
City of San Diego  
Financial and Technical Services Business Center  
202 "C" Street, MS.-9B  
San Diego, CA 92101-3868  
Attention: Patricia T. Frazier

Dissemination Agent: Deputy City Manager  
City of San Diego  
Financial and Technical Services Business Center  
202 "C" Street, MS.-9B  
San Diego, CA 92101-3868  
Attention: Patricia T. Frazier

SECTION 14. Counterparts. This Disclosure Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Dated as of \_\_\_\_\_, 1999

PUBLIC FACILITIES FINANCING AUTHORITY  
OF THE CITY OF SAN DIEGO

By: \_\_\_\_\_  
Patricia T. Frazier, specified designee of Michael T. Uberuaga, Chair

Dated as of \_\_\_\_\_, 1999

\_\_\_\_\_ as Dissemination Agent

By: \_\_\_\_\_  
Its: Authorized Officer

**NOTICE TO REPOSITORIES OF FAILURE TO FILE ANNUAL REPORT**

Name of Issuer: Public Facilities Financing Authority of the City of San Diego

Name of Bond Issue: Refunding Revenue Bonds (Reassessment District No. 1999-1) Series 1999-A Senior Lien Bonds and  
Series 1999-B Subordinate Lien Bonds

Date of Issuance: \_\_\_\_\_, 1999

NOTICE IS HEREBY GIVEN that the Public Facilities Financing Authority of the City of San Diego has not provided an Annual Report with respect to the above-named Bonds as required by the Indenture of Trust, dated as of January 1, 1999. [The Issuer anticipates that the Annual Report will be filed by \_\_\_\_\_.]

Dated: \_\_\_\_\_

\_\_\_\_\_, on behalf of ISSUER

cc: Issuer